



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/300,510	09/02/94	GEFTER M	092.005

LAHIVE & COCKFIELD, LLP
28 STATE STREET
BOSTON MA 02109

HM31/0305

EXAMINER
CUNNINGHAM, T

ART UNIT 1644	PAPER NUMBER
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DATE MAILED: 03/05/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Advisory ActionApplication No.
08/300,510Applicant(s)
Gefter et al.Examiner
Thomas CunninghamGroup Art Unit
1644

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires _____ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Jun 12, 1997 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on _____ has been considered with the following effect, but is **NOT** deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The proposed amendment of claim 106 does not raise new issues. The proposed amendment of claim 133 raises new issues with respect to use of "without adjuvant" instead of "in nonimmunogenic form".

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):
- Claims allowed: None
- Claims objected to: None
- Claims rejected: 103-144
- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Other The amendment of claim 133 would also affect interpretation of the generic claims from which it depends and raise additional considerations.

TC**THOMAS CUNNINGHAM
PRIMARY EXAMINER
ART UNIT 1644**

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NOTICE OF DEFECTIVE APPEAL BRIEF

The brief does not include a statement that claims 103-144 do not stand or fall together, however, pages 6-10 "Grouping of Claims" appear to argue or present reasons why such claims do not stand or fall together, see both "Grouping of Claims" section and "Argument" section which has arguments directed to different claim limitations. In the absence of a statement that the claims do not stand or fall together, the Board will presume that all claims stand or fall together, see MPEP 1206. Where the Appellant omits the statement required by 37 C.F.R. 1.192(c)(7) yet presents arguments in the "Argument" section of the Brief that different claims may stand or fall independently, the Examiner must notify the Appellant of noncompliance as per 37 C.F.R. 1.192(d), see MPEP 1206.

The brief does not contain a concise explanation of the invention defined in the claims involved in the appeal, which refers to the specification by page and line number, and to the drawing, if any, by reference characters as required by 37 CFR 1.192(c)(5). The invention examined pursuant to the election of species requirement is directed to methods and products comprising a peptide from the Fel D1 allergen. Pages 3-5 "Summary of the Invention" of the Appeal Brief are not directed to the invention as it reads on the elected species. Appellant is required to comply with the provisions of 37 CFR 1.192(c).

The brief does not contain an accurate statement of the status of an amendment filed subsequent

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to the final rejection as required by 37 CFR 1.192(c)(4). The amendment filed 12/12/97 has not been entered as it would raise new issues or require additional consideration after final rejection. Further limitation of claim 133 to "without adjuvant" raises specific enablement issues with regard to methods or compositions not containing an adjuvant. By inference it raises additional issues with regard to the broader claims from which claim 133 depends, i.e. what effect, if any, the lack of an adjuvant (or the presence of one), would have.

Applicant is given a TIME LIMIT OF ONE MONTH from the date of this letter or any time remaining in the period under 37 CFR 1.192(a) for filing a new complete brief. If a new brief that fully complies with 37 CFR 1.192© is not timely submitted, the appeal will be dismissed as of the date of expiration of the period provided by 37 CFR 1.192(a). NO EXTENSION OF THIS ONE MONTH TIME LIMIT MAY BE OBTAINED UNDER EITHER 37 CFR 1.136(a) or (b) but the original TWO-MONTH period under 37 CFR 1.192(a) for filing the brief may be extended under 37 CFR 1.136(a) up to SIX MONTHS from the date of the notice of appeal.

TC

THOMAS M. CUNNINGHAM
PRIMARY EXAMINER
GROUP 1800